Opinion issued December 9, 2010

In The

Court of Appeals

For The

First District of Texas

NOS. 01-09-00903-CR & 01-09-00904-CR

LAWRENCE HOWARD WHITE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Case No. 1191413 & 1200812

MEMORANDUM OPINION

Appellant Lawrence Howard White appeals the trial court's adjudication of his guilt in two cases—burglary of a habitation and robbery.[1] The trial court assessed his punishment at five years in prison on each case, and ordered the sentences to run concurrently. Appellant's single issue asserts that the court abused its discretion. We affirm.

BACKGROUND

On June 10, 2009, appellant pled guilty to robbery and burglary of a habitation pursuant to a plea agreement. Adjudication of his guilt in both cases was deferred for five years and he was placed on community supervision in both cases. His conditions of community supervision required that he not commit any offense against the law of this state, that he "[a]void injurious or vicious habits," that he not "use, possess, or consume . . . marijuana," and that he "work faithfully at suitable employment and present written verification of employment (including all efforts to secure employment)" to his community supervision officer on each reporting date.

Less than three months later, the State filed motions to adjudicate in both cases, alleging that appellant had violated the conditions of his supervision by

(1) possessing less than two ounces of marijuana on or around August 22, 2009;

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[1] Trial court cause number 1191413/appellate court cause number 01-09-00903-CR (burglary of a habitation); trial court cause number 1200812/appellate court cause number 01-09-00904-CR (robbery).

(2) testing positive for marijuana on June 10, 2009, June 26, 2009, July 9, 2009, and July 29, 2009; and

(3) failing to provide proof of employment for the months of June 2009 and July 2009.

At the October 8, 2009 hearing on these motions, appellant pled not true to all the allegations. The State put on three witnesses—Elmer Melgar, the custodian of records for the community supervision office as to appellant's records, who testified to the results of appellant's drug screens and to appellant's lack of proof of employment and/or his efforts to find same in June and July 2009; Kenneth Taylor, a peace officer with Harris County Precinct 4, who testified about his arrest of appellant on August 22, 2009 and confiscation of a baggie of marijuana from appellant, and who sponsored the admission of the actual seized marijuana; and Kay McClain, a forensic chemist with the Harris County Medical Examiner's Office, who testified that the marijuana weighed 0.11 ounces.

Appellant testified in his own defense and claimed the positive marijuana tests resulted from his having smoking marijuana before being placed on community supervision and that later tests were negative; that on August 22, 2009, he had no marijuana and Taylor must have planted it on him; that he had found a job, but had been incarcerated before he could start working; and that he had made efforts to find a job and had told his probation officer about his efforts. Appellant's witnesses were Chantelle Payne, his fiancé, who spoke to their life

together and appellant's efforts to change his life; appellant's mother, Shirley Ann White, who related his general good behavior and attempts to work and find work; and appellant's pastor and the father of his fiancé, Reverend Lonnie T. Hearn, who testified that he would help appellant to stay "in the Christian path" and continue doing the positive things that he was doing.

At the conclusion of the hearing, the trial court found that all three allegations were true, revoked appellant's community supervision, adjudicated his guilt in both cases, and sentenced him to five years in prison in each case with the sentences to run concurrently.

DISCUSSION

In his sole issue, appellant contends that the trial court abused its discretion in adjudicating his guilt because insufficient evidence was presented to support any of the violations of community supervision alleged.

A trial court's decision to adjudicate guilt "is reviewable in the same manner as a revocation hearing conducted under Section 21 of this article in a case in which an adjudication of guilt had not been deferred." TEX. CODE CRIM. PROC. ANN. art. 42.12 § 5(b) (Vernon Supp. 2010). A motion to adjudicate proceeding is an administrative hearing, not a criminal or civil trial; the State is required to prove, by a preponderance of the evidence, that at least one condition of community supervision has been violated in order for the motion to be granted.

See Cobb v. State, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993) (discussing revocation hearings); *Canseco v. State*, 199 S.W.3d 437, 438–39 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd) (same). This standard is met when the greater weight of the credible evidence creates a reasonable belief that a defendant violated a condition of his community supervision. *See Rickels v. State*, 202 S.W.3d 759, 764 (Tex. Crim. App. 2006). The trial court is the exclusive judge of the credibility of the witnesses and determines if the allegations in the motion to revoke are true. *Canseco*, 199 S.W.3d at 439. Proof of a single violation is sufficient to support the trial court's decision. *Id.* Our review on appeal is limited to determining whether the trial court abused its discretion in making its decision. *See Rickels*, 202 S.W.3d at 763. Our review must regard the evidence in the light most favorable to the trial court's decision. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. 1981).

Appellant challenges the trial court's determination of all three allegations in the motions to adjudicate. His challenge to the proof that he committed the offense of possession of marijuana is solely based on his contention that there was insufficient evidence that the 0.11 ounces of marijuana seized from him was a "usable quantity." *See* TEX. HEALTH & SAFETY CODE ANN. § 481.121(a) (Vernon 2010) (providing that person commits an offense if he knowingly or intentionally possesses *usable* amount of marijuana); *Lejeune v. State*, 538 S.W.2d 775, 777–78

(Tex. Crim. App. 1976). Appellant argues that, since neither the officer nor the chemist testified that the marijuana seized was a "usable quantity," the State failed to meet its burden to prove, by a preponderance of the evidence, that appellant committed the offense of possession of less than two ounces of marijuana.

A "usable quantity" of marijuana is "an amount sufficient to be applied to the use commonly made thereof." *Moore v. State*, 562 S.W.2d 226, 228 (Tex. Crim. App. 1977) (quoting *Pelham v. State*, 164 Tex. Crim. 226, 298 S.W.2d 171, 173 (Tex. Crim. App. 1957)). We have noted that this means there must be "enough marijuana to roll into a cigarette or smoke in a pipe." *See Williams v. State*, No. 01-08-00936-CR, 2010 WL 2220586, at *8 (Tex. App.—Houston [1st Dist.] June 3, 2010, pet. filed on other grounds) (not designated for publication) (quoting *Kimberlin v. State*, No. 05-02-02020-CR, 2004 WL 1110523, at *1–2 (Tex. App.—Dallas May 19, 2004, no pet.) (not designated for publication).

Whether a particular amount of marijuana is a "usable quantity" can be proven by circumstantial evidence or inferences may be drawn from the amount of marijuana possessed. *State v. Perez*, 947 S.W.2d 268, 271 n.6 (Tex. Crim. App. 1997). Here, the marijuana was admitted as evidence at the adjudication hearing. The trial court had the opportunity to view it, examine it, and determine whether it was a sufficient quantity to be smoked. *See our discussion in Williams*, 2010 WL 2220586, at *9, *10 (holding that officers' testimony was not only evidence that

marijuana was "usable quantity;" noting that, because marijuana was introduced into evidence, factfinder was able to examine it to determine whether it was usable amount); *see also Kimberlin*, 2004 WL 1110523, at *1–2 (discussing holdings from Court of Criminal Appeals and intermediate appellate courts finding evidence sufficient to prove "usable quantity" in absence of any direct testimony, and interpreting such cases to mean that there is no specific quantity that constitutes legal standard for determining "usable quantity" and that if factfinder is able to examine actual marijuana found in defendant's possession, factfinder can determine whether or not it was "usable quantity"). Additionally, a court may take judicial notice that a certain amount of marijuana is a usable amount. *See Cooper v. State*, 648 S.W.2d 315, 316 (Tex. Crim. App. 1983). Amounts far less than 0.11 ounces[2] have been established as "usable" quantities of marijuana sufficient to support a conviction. *See Terrill v. State*, 531 S.W.2d 642, 643 (Tex. Crim. App. 1976) (1.48 grams or 0.05 ounces); *Mitchell v. State*, 482 S.W.2d 223, 225 (Tex. Crim. App. 1972) (0.0074 grams); *Tuttle v. State*, 410 S.W.2d 780, 782 (Tex. Crim. App. 1966) (op. on reh'g) (0.063 grams).

The introduction the marijuana at the hearing provided sufficient evidence for the trial court to determine, by a preponderance of the evidence, that appellant possessed a "usable quantity" of marijuana. Because the greater weight of the

[2] One ounce equals 28 grams; 0.11 ounces equals 3.11844 grams.

credible evidence created a reasonable belief that appellant violated a condition of his community supervision, *see Rickels*, 202 S.W.3d at 764, the trial court did not abuse its discretion in adjudicating appellant's guilt. *See Canseco*, 199 S.W.3d at 439 (holding that proof of single violation sufficient to support trial court's decision to revoke).

We overrule appellant's sole issue.

CONCLUSION

We affirm the judgment of the trial court in each cause.

Jim Sharp
Justice

Panel consists of Justices Jennings, Alcala, and Sharp.

Do not publish. TEX. R. APP. P. 47.2(b).